IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

In Re: PHARMACEUTICAL INDUSTRY AVERAGE WHOLESALE PRICE LITIGATION	MDL No. 1456 CIVIL ACTION NO. 01-CV-12257-PBS

CERTIFIED COPY

HIGHLY CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER

DEPOSITION OF WILLIAM C. PEARSON
New York, New York
Friday, January 7, 2005

Deposition of WILLIAM C. PEARSON, held at the offices of Patterson, Belknap, Webb & Tyler LLP, 1133 Avenue of the Americas, New York, New York, pursuant to Notice, before Frank J. Bas, a Registered Professional Reporter and Notary Public of the State of New York.

A P P E A R A N C E S:

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(Appearing Telephonically)
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I N D E X

REQUESTS

E X H I B I T S

E X H I B I T S

(Time noted: 9:51 a.m.)

W I L L I A M C. P E A R S O N, stating his business address as Ortho Biotech Products, L.P., 430 Route 22 East, Bridgewater, New Jersey, having been duly sworn by the Notary Public (Frank J. Bas), was examined and testified as follows:

EXAMINATION BY

MR. HOFFMAN:

Q. Good morning, Mr. Pearson. My name is Allan Hoffman and I'm an attorney for the plaintiffs in this case. Have you ever been deposed before?

A. Yes.

Q. And in what -- what was the nature of the litigation in which you were -- how many times have you been deposed before?

A. Once.

Q. And what was the nature of that litigation?

A. It was in regards to the litigation with Amgen.

Q. With Amgen?
A. Yes.
Q. Over the license agreement?
A. Yes.
Q. Since you've been deposed before, I'll just go over some ground rules, some instructions to bear in mind during this deposition so that we have as clear a record as possible and we don't talk over each other.
First off, because we have a court reporter who is taking down your testimony, you have to give oral responses, no shrugs or nodding of the head. Do you understand that?
A. Yes.
Q. Also, you're here under oath, and you understand that you're susceptible to all the penalties of perjury should you lie under oath. Do you understand that?
A. Yes.
Q. If you don't hear a question, please tell me and I'll repeat it. Is that okay?
A. Yes.

Q. If you don't understand a question, please tell me and I'll rephrase it. Do you understand that?

A. Yes.

Q. If at any time you feel you want to take a break, just let me know, we'll stop and you can get up and do whatever you need to do. Is that okay?

A. Yes.

Q. Otherwise I'll assume that you've heard and understood all of my questions and that you've answered them truthfully. Okay?

A. Yes.

MR. HOFFMAN: Frank, let's mark this as Exhibit Pearson 001.

(Exhibit Pearson 001, for identification, Notice of Deposition.)

Q. Mr. Pearson, I've put before you what the court reporter has marked as Exhibit Pearson 001, and it's entitled Notice of Deposition. Do you understand that?

A. Yes.

direction from Amgen to do that.

Q. Did you ever follow up on those anecdotal reports?

A. What do you mean follow up?

Q. I mean did you ever follow up to find out whether or not they were true?

A. Well, you know, I asked the people within our sales force if they were true -- and of course, you know, again anecdotal reports -- that if they were true.

Q. Right. If you were getting reports from doctors that it was being promoted that way, did the doctors offer to give you any documents which showed that?

MR. SCHAU: Objection, foundation.

A. They didn't offer any documents to me, no.

Q. Did anyone from OBI ask for documents which showed that?

MR. SCHAU: Objection, foundation.

A. Did they ask? I don't know that.

Q. So as far as you know, the only thing

that was done was people at OBI asked its sales force to confirm whether or not that was happening out in the field?

A. We heard reports from physicians that it was happening out in the field. We didn't ask our sales force to go out and ask those questions, but we had those comments coming back in.

Q. Did anybody go out to those physicians and interview them and find out in more detail what was going on?

A. Our representatives certainly talked with those physicians, but we didn't send out people to interview those physicians.

Q. Did the knowledge that was coming back from the sales force, was that -- were memos drafted, were any reports drafted to provide information back to management at OBI what was going on?

A. Reports drafted?

Q. Yes.

A. Again, we had reporting of the

anecdotal reports, that that information came back in.

Q. It seems like this would have been a serious issue to OBI, if Aranesp was out there, if Amgen is out there pushing Aranesp based on its reimbursement level?

A. Well, we were concerned about changing the overall reimbursement methodology. You know, we did not want to get into a situation, talking about what we thought Amgen was doing. We wanted to meet with the government to change the reimbursement methodology.

We felt like it needed to be moved away from an AWP-based reimbursement methodology. The federal government, CMS, wanted to move away from an AWP-based reimbursement methodology. We were all on the same page of wanting to change the system.

Q. In what contexts were the discussions that one of OBI's options was to raise the AWP?

A. What context?

Q. Was it a -- what committee was

meeting on the issue?

A. I really don't know. It could have been anyone. You know, it could have been someone throwing an idea out that says okay, we can raise AWP. A lot of ideas were put out on the table during meetings. It doesn't mean that they're valid ideas. It doesn't mean that those ideas were acted upon. But you asked if those ideas were ever raised? Yes, those ideas were raised but they were never acted upon.

Q. Were any analysis made on those ideas or debating of those ideas?

A. Yes, could have been. I just don't recall specifically. But you know, we looked at that action. We didn't act on it.

Q. Other than, I think, economic message, did OBI believe that Aranesp had other advantages over Procrit?

MR. SCHAU: Objection to form.

A. I personally never believed that Aranesp had an advantage over Procrit. I always thought that Procrit was the best product.

Aranesp was promoted based on the convenience of the product with every other week dosing, but I never felt like it was a better product. I always felt clinically that Procrit was the best product.

Q. You've never seen any documents that Amgen's sales reps gave to physicians promoting or comparing the amount of profit one could get from Aranesp versus Procrit?

A. I could have seen documents. I would hesitate to say I've never seen documents, but I've never seen any corporate directives or documents that have been given out by Amgen.

Q. What kind of documents did you see?

A. You know, documents that showed the economic incentive on Aranesp.

Q. Did it look like it was created, you know, by a marketing department?

A. No, it did not.

Q. It looked like it was just an -- an individual had done it?

A. Yes, it did.

these discounts and rebates, you were actually getting a better economic deal than you are from Aranesp?

A. It depended on the situation. Most of the time, as you can witness by looking at the market share in the oncology clinics, in the oncology clinics we lost substantial market share. And the reason we lost substantial market share was because a contractual offering from Amgen on Aranesp, and Neupogen and Neulasta, was a better offering than on Procrit.

Q. And what were the reasons why you couldn't come up with a better offer than Amgen had?

A. I'm sorry? Why we could not?

Q. Yes.

A. Again, the total value of Procrit to that practice was not as large as the total value of Aranesp, Neupogen and Neulasta.

Q. Could that have been countered by giving larger rebates or discounts?

A. You could never win. If you bought

$100,000 of Procrit, and if you bought $200,000 of Aranesp, Neupogen and Neulasta, if we gave a 5 percent discount and they gave a 5 percent discount, the total value on 200,000 is greater than 5 percent on 100,000.

If we went to 6 percent, they went to 6 percent. Again, the total bundle was larger.

You could never win it.

Q. So as a result of not being able to win it, OBI changed its marketing strategy to emphasize what?

MR. SCHAU: Objection, foundation.

Q. You said that there was a clinical message. I understand that.

A. Right. Clinical was very important. Let me go back and touch on that. We continued to stress the need to sell the product first. We believed that the patient was important. We believed that the clinical benefit was important. So we stressed that first.

We wanted to move away from, as much as possible, from a contractual message. But

having said that, we knew that we had to contract with these clinics. We conducted other clinical trials comparing Procrit to Aranesp. Some of that data was recently launched in 2004 showing the clinical benefits that Procrit would have over Aranesp.

I mean if you're an oncology patient and you're on chemotherapy, you want to receive the best drug. We thought that Procrit was the best drug for the patient, so we continued to stress that throughout the clinic. With the physicians, and with the nurses. We felt like it was the best product.

Stay with me for a second, okay? I heard your question.

We continued to contract. Okay? Even though we couldn't win, we continued to try to discount, to get as close as possible to meet the competition. But we couldn't -- we could not win a discounting war. We continued to meet with CMS, in terms of reimbursement, to try to get the reimbursement methodology changed.

Reimbursement methodology, meeting with CMS, was the primary focus. We felt like an AWP -- AWP-based reimbursement methodology was faulty. We felt like the government could save money by changing the methodology.

CMS agreed with us. They were trying to work through and resolve all those issues. They're still trying to do it today.

In fact, in meeting with CMS, they moved to what they call equitable payment. And I'm sure you've read that in these documents, and in functional equivalents. As we looked at converting so many units of Procrit to so many micrograms of Aranesp, they tried to look at the clinical data to establish what an appropriate conversion factor would be to offer equitable payment. In fact, they established and implemented functional equivalence or equitable payment in the hospital marketplace, to ensure that Aranesp did not have a reimbursement advantage.

In fact, there was a lot of

discussion about doing that in the Medicare carrier Part B side. One Medicare carrier moved to that. Dr. Stone out in Utah implemented the least costly alternative. And that's what we wanted to see them do across the system.

In fact, that was soon rescinded and Dr. Stone is no longer in that position. But we were encouraging CMS to move in that.

So strategically our focus was to work with CMS, to work with the government, to have equitable payment across all payor types. We did not want an economic advantage anywhere in the marketplace.

Q. Explain to me why OBI began to emphasize the lower cost of the product, and how they did it.

A. Well, as I mentioned before, we could not win a discounting war. Okay? We did not want to compete based on price.

When Aranesp was introduced in Europe, the reimbursement system there established a conversion ratio of 200 to 1, that

200 units of Procrit would equal 1 microgram of Aranesp. The pricing in Europe was different than the pricing in the U.S. for Aranesp.

And so we were recommending that CMS consider the same conversion ratio.

In fact, the promotional materials for Aranesp in Europe were at a ratio of 200 to 1. We showed those materials to CMS. We tried to demonstrate exactly how many units you needed to get a response in hemoglobin in, and what would be a similar response with Aranesp in establishing a conversion ratio.

CMS reviewed the documents that Amgen had submitted to the FDA. In fact, some of the original nephrology documents by the FDA reviewer said the conversion ratio was 260 to 1, very close to the conversion ratio established in Europe at 200 to 1.

In fact, when equitable payment was introduced in the hospital and marketplace, that is the ratio that CMS used.

We also used the approved dosing in

the Aranesp package insert to look at how many units were necessary for one week, get a response according to label, and compare it label to label, and label to the most commonly used dose to establish conversion ratio.

Again, we were asking for a conversion ratio of 200 to 1. They had initially established a conversion ratio of 260 to 1.

We had met with them year after year to discuss this. In fact, the second year they changed the conversion ratio from 260 to 1 to 330 to 1, and in this last year they kept it at 330 to 1.

Q. What did the dosage -- how did that factor into this, the dosage sizes?

A. How did it factor into it? Frequency of dosing or the dosing?

Q. The frequency of dosing.

A. Well, their original package insert was 2.25 micrograms per kilogram, and if you took the average weight of an oncology patient, and multiplied it by 2.25 micrograms, it came to

don't mind.

Q. Okay, sure.

(Witness reviews document.)

A. Okay.

Q. And again, it says here Ms. Piech is the executive director of health economics and pricing for PGSM.

A. Yes.

Q. We talked about Ms. Piech earlier. In this document at the top she says, in the second line in parenthesis, "I'm not sure how a survey of wholesalers could produce a higher spread, since branded companies typically set and publish, provide their WACs and AWPs." Do you see that?

A. Yes, I do.

Q. And that's consistent with your earlier testimony, isn't that true?

A. That's correct.

Q. How often did you interact with Ms. Piech?

A. At that point in time not very

frequently.

Q. Since then do you do it more frequently?

A. Yes.

Q. Why is that?

A. Because she moved from PGSM to Ortho Biotech.

Q. What is her position at Ortho Biotech?

A. As I had testified earlier, she's in clinical outcomes.

MR. HOFFMAN: Okay. I have no further questions.

EXAMINATION BY

MR. SCHAU:

Q. Mr. Pearson, in honor of your forthcoming retirement, I'll ask you very few questions.

Procrit was launched in 1991; is that right?

A. That's correct.

Q. From the time that Procrit was

launched through to date, has OBI ever had a policy of allowing its sales representatives to promote Procrit based on profit potential or margin?

A. No.

Q. Is the same true for Sporanox, Duragesic and Leustatin?

A. Yes.

Q. From the time that OBI first developed a policy regarding reimbursement and the discussion of reimbursement, has that policy always been that Ortho Biotech's sales representatives were prohibited from promoting Procrit based on profit potential or margin?

MR. HOFFMAN: Objection.

A. Yes.

Q. Is that also true of Sporanox, Duragesic and Leustatin?

A. Yes.

Q. Why are physicians interested in reimbursement?

A. Because physicians want to ensure

that they don't lose money when they utilize a product.

MR. SCHAU: That's all I have. Thank you.

MR. HOFFMAN: No further questions.

(Whereupon, at 4:33 p.m., the deposition was concluded.)